

**AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**BROOKS FARM ESTATES, PHASE I**

STATE OF TEXAS           §  
                                     §     **KNOW ALL MEN BY THESE PRESENTS THAT:**  
COUNTY OF COLLIN     §

**THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made effective as of the date hereinafter set forth by The Brooks Farm Estates Homeowners Association, Inc., a Texas Non-Profit Corporation ("Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant caused that certain Declaration of Covenants, Conditions and Restrictions to be filed as Collin County Clerk's Document No. 2005-0176520 in Volume 6067, Page 1796 of the Official Records of Collin County, Texas, as modified by that certain First Modification and Amendment of Declarations of Covenants, Conditions and Restrictions dated June 13, 2006, filed as County Clerk's Document No. 2006-0613000805940 in the Official Records of Collin County, Texas, and that certain Second Modification and Amendment of Declarations of Covenants, Conditions and Restrictions dated October 19, 2009, and filed as County Clerk's Document No. 2010-0826000894520 in the Official Records of Collin County, Texas and that certain Third Modification and Amendment of Declaration of Covenants, Conditions and Restrictions dated October 3, 2010, and filed as County Clerk's Document No. 2010-1122001280920 in the Official Records of Collin County, Texas (collectively, the "Original Declaration").

**WHEREAS**, the Declaration pertained to certain property located in Parker, Collin County, Texas, more particularly described in the Original Declaration, together with any additional property thereafter added to the Original Declaration pursuant to a Supplemental Declaration of Protective Covenants dated October 20, 2006, filed as County Clerk's Document No. 2006-1020001512130 in the Official Records of Collin County, Texas (the "Property");

**WHEREAS**, in accordance with Section 9.03 of the Original Declaration, Declarant desires to modify and amend the Original Declaration as said amendments and modifications are made with the written consent of the Owners of fifty-one percent (51%) of the Tracts within the Subdivision.

**WHEREAS**, it is deemed to be in the best interests of Declarant and any other person who may purchase a Tract in the Subdivision, that there be established and maintained a consistent, harmonious and uniform plan for the improvement and development of the Subdivision as a highly restricted and modern subdivision of the highest quality and for protecting the value of the Subdivision;



**NOW, THEREFORE,** Declarant, with approval of more than fifty-one percent (51%) of the Tracts in the Subdivision, does hereby modify and amend the Original Declaration as hereinafter provided.

## **ARTICLE I**

### **DEFINITIONS**

**1.01 "Architectural Committee"** means and refers to the Architectural Committee described in Article VII hereof.

**1.02 "Association"** means and refers to The Brooks Farm Estates Homeowners Association, Inc., a Texas nonprofit corporation, and its successors and assigns. The Association is a "property owners association" as such term is defined in Section 202.001(2) of the Texas Property Code, as amended.

**1.03 "City"** means and refers to the City of Parker, Texas.

**1.04 "Common Area"** means and refers to the easements and easement rights reserved by the Declarant in accordance with Section 8.03 hereof for the benefit of Declarant and the Association and their successors and assigns over portions of the Subdivision, which shall include, but need not be limited to landscaped road frontage areas and a pond as shown on the Recorded Plats referenced herein, together with any improvements now or hereafter construed thereon. Common Area shall also include any improvements constructed by Declarant or the Association within the Common Area. Common Area shall include the streets shown on the Plat until such time as such streets are accepted by the City or the repair and maintenance obligations with regard thereto have been accepted by the City. If the City does not accept such streets or the maintenance obligations associated therewith, the Association shall be responsible for maintaining the streets. Except as otherwise provided herein, the Association shall maintain the Common Area. Additional property may be added to the Common Area hereunder only upon the approval of the affirmative vote of a majority [greater than fifty percent (50%)] of the votes represented at a meeting of the Members of the Association duly called for that purpose at which a quorum is present in person or by proxy; provided, however, without obtaining the consent of the Members of the Association, Declarant may add property to the Common Area, as well as improvements constructed or to be constructed thereon, if such additional property is depicted on any recorded plat of all or any part of the Property as Common Area, as well as any additional property intended or devoted to the common use, enjoyment or benefit of the Members of the Association or the Subdivision. Common Area shall specifically exclude sidewalks, street signs, traffic control devices or any other facility operated or maintained by the City or any public utility company.

**1.05 "Declarant"** means and refers to The Brooks Farm Estates Homeowners Association, Inc., a Texas nonprofit corporation, and its successors and assigns and its predecessor, Parker Brooks Farm, Ltd.



**1.06 "Living Unit" or "residence"** means and refers to any improvements on a Tract which are designated and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit.

**1.07 "Member"** means and refers to every person or entity that holds a membership in the Association.

**1.08 "Mortgagee"** means and refers to a person or entity which has loaned or advanced money to an Owner or to Declarant for the purchase or improvement of a Tract or other property in the Subdivision and has taken a recorded lien on such property to evidence the security for such loan. The term "Mortgagee" specifically excludes a person or entity which has loaned or advanced money to an Owner pursuant to Article XVI, Section 50(a)(6) of the Texas Constitution.

**1.09 "Owner"** means and refers to the record owner, whether one or more persons or entities, of a fee or undivided fee interest in any Tract, but excluding those having such interest merely as security for the performance of an obligation.

**1.10 "Property"** means and refers to those certain tracts, lots or parcels of land known as Lots 1-9, Block A, Lots 27 and 28, Block A, Lots 1-24, Block B, and Lots 1 - 4, Block C of Brooks Farm Estates, Phase I, an Addition to the City of Parker, Collin County, Texas, according to the Map or Plat thereof recorded as County Clerk's Document No. 2005-0176510 in Volume R, Pages 215 and 216 of the Plat Records of Collin County, Texas, together with Lots 10-25, Block A and Lots 25-41, Block B, Brooks Farm Estates, Phase II, an Addition to the City of Parker, Collin County, Texas, according to the Map or Plat thereof recorded as County Clerk's Document Nos. 2006-1020001512130 and 2006-690-691 of the Plat Records of Collin County, Texas. Upon the addition of any other land to the scheme of restrictions imposed hereby and in accordance with Article XI hereof, such other land shall be deemed to be included in the term "Property" for purposes of this Declaration, subject, however, to any modifications or amendments set forth in any Supplemental Declaration of Protective Covenants contemplated by Article XI hereof.

**1.11 "Purchaser"** means and refers to an individual who purchases a Tract.

**1.12 "Subdivision"** means "Brook Farm Estates" and shall cover and include the Property, together with any additional property added to the Property in accordance with Article XI of the Declaration.

**1.12 "Tract"** means and refers to any lot or tract of land shown upon a map or plat of all or any portion of the Property recorded in the map, plat or official records of Collin County, Texas, which is designated as a tract or lot therein and which is or will be improved with a Living Unit; provided, however, some portions of the Common Area may be platted as a "lot" or "tract" on such recorded map or plat, but those lots shall be excluded from the concept and definition of "Tract" as used herein. "Corner Tract" means and refers to a Tract that abuts on more than one street. A Corner Tract is deemed to front on the street designated by the Architectural Committee.



## ARTICLE II

### MEMBERSHIP; VOTING RIGHTS; POWERS AND DUTIES

**2.01 Membership.** Every Owner of a fee or undivided fee interest in a Tract holds a membership in the Association. The foregoing is not intended to include persons or entities that hold an interest in a Tract merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from ownership of a Tract, except as to a lessee. Any Mortgagee who acquires title to any Tract through judicial or non-judicial foreclosure will be a Member of the Association, as a result of such Mortgagee's status as the Owner of such Tract.

**2.02 Voting Rights.** There are two classes of membership entitled to voting rights in the Association as follows:

(a) **Class A.** All Members in the Association, other than Declarant, are considered Class A Members, and for each Tract owned are entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as provided in Section 2.02(c) herein below. When a Tract is owned by more than one Class A Member, all the individuals or entities holding an ownership interest in that Tract are considered Class A Members; however, for such Tract they are entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Tract is to be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Tract.

(b) **Class B.** Class B Members are those individuals or entities who are herein defined as Declarant and for each Tract owned they are entitled to ten (10) votes on each matter coming before the Members at any meeting or otherwise. When a Tract is owned by more than one Class B Member, all such individuals or entities holding an ownership interest in that Tract will be Class B Members; however, for such Tract they are entitled to a total of no more than ten (10) votes on each matter coming before the Members at any meeting or otherwise. The ten votes for such Tract are to be exercised as they among themselves determine, but in no event shall more than ten (10) votes be cast with respect to such Tract. In the event a Tract owned by a Class B Member is sold to an Owner who would be classified as a Class A Member, the Class B membership ceases to such Tract, and the Owner automatically is entitled to one vote for such Tract as a Class A Member. All Class B memberships cease and automatically convert into Class A memberships on the happening of either of the following events, whichever occurs earlier:

(i) When the total number of votes entitled to be cast by the Class A Members equals the total number of votes entitled to be cast by the Class B Members; or

(ii) Ten (10) years from the date this Declaration is filed with the County Clerk of Collin County, Texas, for recordation in the Deed Records of Collin County, Texas.



(c) **Suspension.** A Member's voting rights may be suspended by the Association for any period during which any assessment against such Member's Tract or any other sum due to the Association by such Member remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations.

**2.03 Quorum.** Except as otherwise provided in Section 3.05 of Article III or the Bylaws of the Association, the quorum required for any action referred to in this Article II shall be as follows:

(a) At any meeting of Members called by the Board of Directors of the Association, the presence at the meeting of Members, or of their proxies, entitled to cast fifty-one percent (51%) of all of the votes of the Association shall constitute a quorum. Any action taken at such meeting shall require approval by Members holding at least fifty-one percent (51%) of the votes represented at such meeting of the Members at which a quorum is present, in person or by proxy. Any partial number of membership votes shall be rounded down to the next full number.

(b) As an alternative to the procedure set forth immediately above, any action referred to in this Article II may be taken without a meeting if a consent in writing, approving the action to be taken, shall be signed by Members holding more than fifty-one (51%) of the outstanding votes of the Association.

**2.04 Powers and Duties.** The affairs of the Association shall be conducted by the Board of the Association which shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Area and the Owners, shall provide, and shall pay out of the assessments provided for in Article III below, the following:

(a) Care and preservation of the Common Area and the furnishing and upkeep of any desired personal property for use in the Common Area. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from any reserve fund as specifically provided in Section 2.08 hereof.

(b) Care and maintenance of the landscaping, masonry walls and/or fencing and entry features which may be constructed by the Association on the Common Area or on private property. Maintenance includes all repair or rebuilding required to remove graffiti or obscenities.

(c) The services of a person or firm to operate and manage the Association, the Subdivision, or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(d) Legal and accounting services.

(e) Any other materials, supplies, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the



terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(f) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(g) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Area.

(h) If, as and when the Board, in its sole discretion, deems necessary, it may take action to protect or defend the Common Area from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association, and to provide adequate reserves for repairs and replacements.

(i) To make reasonable rules and regulations for the operation and use of the Common Area and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by a majority of the Members in the portions affected.

(j) To make available to each Owner, within one hundred twenty (120) days after the end of each year, an annual report.

(k) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(l) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

(m) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Area.

(n) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on the individual Tracts with respect to: (i) taxes on the Common Area, and (ii) insurance coverage of the Common Area, as they relate to the assessment, collection and disbursement process envisioned by this Declaration.

**2.05 Board Powers.** From and after the date on which the title to or any easement or other interest in the Common Area has been granted to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

**2.06 Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of



services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**2.07 Liability Limitations.** Neither any Member nor the Board of the Association (or any of them) nor the officers (if any) of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Association, its directors, officers, agents nor employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

**2.08 Reserve Fund.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the properties and maintaining the Common Area and improvements therein, all as may be more specifically authorized from time to time by the Board of the Association. Capital expenditures from this fund may include by way of example, but not be limited to, repair of major damage to the Common Area not covered by insurance.

**2.09 Disclaimer.** NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE CONSIDERED TO HAVE A DUTY TO INSURE OR GUARANTEE THE SAFETY OF THE OWNERS IN THE SUBDIVISION OR TO BE THE PROVIDER OF SECURITY SERVICES. WHETHER OR NOT SUCH SERVICES ARE PROVIDED BY THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR INJURY BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES AND SERVICES TAKEN OR PROVIDED. EACH OWNER, TENANT, GUEST OR INVITEE ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION AND ITS OFFICERS, DIRECTORS AND COMMITTEE MEMBERS ARE NOT SECURITY SERVICES PROVIDERS AND ACKNOWLEDGES THAT THE ASSOCIATION AND ITS DIRECTORS, OFFICERS AND COMMITTEE MEMBERS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

### ARTICLE III

#### COVENANT FOR ASSESSMENTS



**3.01 Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each Tract within the Subdivision which is or hereafter becomes subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Tract which is or hereafter becomes assessable, by acceptance of a deed thereto, whether or not it is expressed in the deed or other evidence or the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this Declaration.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges, assessments and sums, together with such interest thereon and cost of collection thereof, as hereinafter provided, constitute a charge on the Tract and are secured by a continuing contractual lien upon the Tract against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees are and remain the personal obligation of the individual or individuals who owned the particular Tract at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Tract.

**3.02 Purpose of Assessments.** The assessments levied by the Association are to be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, will be applied toward the payment of taxes, insurance premiums, repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association, for any or all of the following purposes: lighting, improving and maintaining paths, parkways and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with enforcement of this Declaration; employing policemen or watchmen and/or a security services; fogging and furnishing other general insecticide services; acquiring and maintaining any amenities or recreational facilities that may be operated in whole or in part for the benefit of the Owners; repayment of debt (principal and interest) incurred by the Association to acquire, repair, maintain or improve the Common Area or facilities situated thereon; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision in neat and good order, or which it considers of general benefit to the Owners or occupants of the Subdivision, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences, ancillary appurtenances, and Tracts as hereinafter provided. It is understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds is final and conclusive so long as said judgment is reasonable and exercised in good faith.



**3.03 Annual Assessments.** Annual assessments are due and payable in advance on January 1 of each year as provided herein. The initial annual assessment is **\$650.00** per Tract as established pursuant to this Declaration or any Supplemental Declaration of Protective Covenants contemplated by Article XI hereof. Annual assessments for subsequent years will be set by the Board of Directors on or before December 1 of each year (beginning in 2005). Unpaid assessments will become delinquent on February 1 of the year for which assessed. The annual assessment with respect to each Tract commences upon the first sale of the Tract by Declarant. If the sale occurs effective other than January 1, the purchaser of the Tract must pay to the Association at closing the pro rata assessment from the date of purchase to December 31 of the following year. Ownership of multiple Tracts shall require payment of multiple annual assessments, as well as special and other assessments contemplated by this Declaration, based upon the number of individual Tracts owned regardless of whether a Living Unit has been or will be constructed on one or more of such Tracts. In the event an Owner desires to combine one or more Tracts into a single Tract pursuant to a replat to be approved by applicable local governmental authorities, Owner shall obtain the prior written approval of the Board of the Association which approval shall be in the sole and arbitrary discretion of the Board. In the event the Board approves the proposed replat of one or more Tracts into a single Tract and such replat is approved by all applicable local governmental authorities, the Owner shall continue to pay multiple assessments, annual, special or otherwise, based upon the number of Tracts originally configured by the Original Declaration, or any Supplemental Declaration of Protective Covenants, and owned by Owner and not based upon the number of Tracts reflected by any such replat described above (unless such replat increases the number of Tracts owned by Owner). The foregoing requirements apply to all assessments contemplated by this Declaration, whether annual, special or otherwise. Nothing contained in this Section 3.03 shall authorize a subdivision or replat of a Tract or Tracts to the extent otherwise prohibited by this Declaration or any Supplemental Declaration of Protective Covenants.

**3.04 Special Assessments for Capital Improvements.** In addition to the annual assessment authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a particular capital improvement located upon Common Area, including the necessary fixtures and personal property related thereto. The Board of Directors of the Association must call a meeting of the Members for the purpose of voting on such special assessment. The amount and time and manner of payment of such assessment shall be established by a vote of the Members entitled to cast at least sixty-six and two-thirds percent (66 2/3%) of the votes represented at a meeting of the Members at which a quorum is present, in person or by proxy. Notice of the special assessment must be mailed to each Owner at the address shown in the records of the Association.

**3.05 Notice of Quorum for any Action Authorized Under Section 3.04.** Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Section 3.04 of this Article III must be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members, in person or by proxy, holding twenty percent (20%) of all membership votes entitled to be cast constitutes a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting will be one-half (1/2) of the required quorum at the preceding meeting.



In lieu of such a meeting and notice, action under section 3.04 hereof may be taken without a meeting if a consent in writing, approving the action to be taken, shall be signed by Members holding more than sixty-six and two-thirds percent (66 2/3%) of the outstanding votes of the Association.

**3.06 Rates of Assessment.** Both annual and special assessments (including those contemplated by Article IV) apply to all Tracts, except those owned by Declarant.

**3.07 Certification as to Payment of Assessments.** The Association or any management company under contract with the Association, upon demand from an Owner, and for a reasonable charge, must furnish a certificate concerning the status of payment of annual or special assessments by such Owner. A properly executed certificate issued by the Association is binding upon the Association as of the date of issuance with respect to the matters set out therein.

**3.08 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments or charges which are not paid when due are delinquent. If an annual assessment is not paid by February 1 of the year in which it is due or if any other assessment or charge is not paid within thirty (30) days after the due date, such assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum or the maximum non-usurious rate, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Tract. Interest, court costs and reasonable attorneys' fees incurred in any such action may be added to the amount of such assessment or charge. Each Owner, by his acceptance of a deed to a Tract, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a non-judicial foreclosure on real property covered by the then current State Bar of Texas Deed of Trust Promulgated Form, and such Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien, with any one of the then officers of the Association serving as the trustee empowered to conduct the sale. Alternatively, the Association may resort to other legal and equitable relief with respect to enforcement of the liens securing the payment of assessments as may be provided by applicable law, including suit for judicial foreclosure. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of Common Area or abandonment of his Tract.

**3.09 Subordination of Lien to Mortgages.** As hereinabove provided, the title to each Tract is subject to the lien securing the payment of all assessments and charges due the Association, but this lien is subordinate to any bona fide purchase money lien or mortgage created for improvements covering a Tract. Sale or transfer of any Tract does not affect this lien. Provided, however, a sale pursuant to a foreclosure of a valid purchase money or improvement mortgage extinguishes the liens securing any unpaid assessments to the date of such sale, and the purchaser at such sale is thereafter the Owner liable for all assessments from and after the date of such foreclosure sale. No extinguishment of the assessment liens relieves the defaulting Owner from personal liability for payment of such assessments. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien



or encumbrance, subject to such limitations, if any, as such Board may determine, in its absolute discretion.

**3.10 Exempt Property.** Notwithstanding the foregoing provisions of this Article III, all Tracts dedicated to and accepted by a local public authority or the City, and all Tracts owned by Declarant or the Association are exempt from the assessments and charges created or contemplated hereby. Tracts owned by any individual partners of Declarant are subject to the same assessments and charges as Tracts owned by other Owners.

**3.11 Additional Assessments.** The Association or any management company under contract with the Association may charge a fee in the amount of **\$200.00** ("Resale Certificate Fee") per resale to cover administrative expenses incurred in the preparation of any Resale Certificate requested by an Owner or a buyer of a Tract from an Owner. In addition, the Association may charge a fee ("Dues Status Letter Fee") in the amount of **\$50.00** for a dues status letter per Tract and per request to cover administrative expenses incurred in the preparation of a letter concerning the status of any dues or assessments affecting or pertaining to any Tract requested by an Owner, a buyer of a Tract from an Owner or any other interested person or entity authorized to obtain same. The Resale Certificate Fee and the Dues Status Letter Fee shall be due and payable by the Owner prior to the date of issuance to the Owner, the Owner's title company or escrow agent, the buyer of the Owner's Tract or any other person or entity. Regardless of the identity of the person or entity requesting the Resale Certificate or the Dues Status Letter, Owner shall pay the Resale Certificate Fee to the Association. The amount of the Resale Certificate Fee and the Dues Status Letter Fee may be adjusted, from time to time, by the Board of Directors of the Association.

## **ARTICLE IV**

### **INSURANCE**

The Association, through the Board of Directors, or its duly authorized agents, has the authority (but not the obligation) to obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and any such other risk as is customarily covered with respect to projects similar in construction, location and use;

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (but with coverage of not less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage



liability, liability for property of others and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds to be of the kind and in an amount the Association deems necessary for the protection of the Owners.

Premiums for all such insurance policies carried by the Association are a common expense payable by assessments on Tracts. Liability and property insurance for Tracts and the contents of residences are the responsibility of each individual Owner. All proceeds from policies held by the Association will be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn by an agent duly authorized by the Board of Directors. In no event will the insurance company or the bank or other financial institution holding proceeds on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies may be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the event the insurance proceeds are determined to be insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association may levy a special assessment for capital improvements against all Tracts to make up the deficiency. This may be done only after compliance with all the requirements for imposition of special assessments.

Any balance from the proceeds of insurance paid to the Association remaining after satisfactory repair and/or rebuilding of said improvements shall be retained by the Association as part of a general reserve fund for repair and replacement. In the event of destruction (total or partial) to the improvements on any individual Tract due to fire or any other cause, the Owner of such Tract covenants and agrees to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year after the date on which the damage occurs.

## ARTICLE V

### USE OF COMMON AREA

The Common Area, and any improvements now or hereafter located thereon, may be occupied and used as follows:

(a) **Restrictive Actions by Owners.** No Owner shall permit anything to be done on or in the Common Area which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association or which would be in violation of any law. No waste shall be permitted in the Common Area.



(b) **Damage to Common Area.** Each Owner shall be liable to the Association for any damage to the Common Area caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, invitees or pets.

(c) **Rules of the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board of Directors of the Association that are consistent with and reasonably necessary to effect the purposes of this Declaration. The Board of Directors of the Association shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

## **ARTICLE VI**

### **PERMITTED USES AND RESTRICTIONS**

**PRIOR TO ACQUIRING ANY INTEREST IN A LOT, ENGAGING A BUILDER, OR ENGAGING AN ARCHITECT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF THE LOT IS STRONGLY ENCOURAGED TO CONTACT THE ASSOCIATION TO OBTAIN AND REVIEW THE MOST RECENT COVENANTS, CONDITIONS, AND RESTRICTIONS. IT IS ALSO STRONGLY ENCOURAGED TO ALSO OBTAIN APPROPRIATE APPROVALS BEFORE ENTERING INTO A CONSTRUCTION CONTRACT, LENDING COMMITMENT, OR MAJOR MATERIALS PURCHASE.**

**THE PURCHASER SHALL BE RESPONSIBLE FOR ENSURING THE BUILDER IS KNOWLEDGEABLE OF ALL COVENANTS RELATED TO THE CONSTRUCTION OF THE PROJECT AND THE CONDUCT OF THE BUILDER'S EMPLOYEES.**

The Property and each Tract shall be constructed, developed, occupied and used as hereinafter provided in this Article VI. No use shall be permitted on the Property or any Tract which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENTS OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE MANDATORY REQUIREMENT VIOLATES THE APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL**



REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION, BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.

**6.01 Residential Use.** The Tracts shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Tract other than one (1) single-family residence per Tract constructed to minimum Federal Housing Authority (hereinafter called "FHA") and Veterans Administration (hereinafter called "VA") standards and a private garage as provided below. The residence located on each Tract shall not exceed two (2) stories in height, but may have a finished attic space. Window dormers are allowed above the second story, but doors and/or balconies are prohibited above the second story of the residence.

**6.02 Single-Family Use.** Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants.

**6.03 Garage Required.** Each residence shall have an attached garage suitable for parking not less than two (2) nor more than four (4) standard size automobiles, which garage shall conform in design and materials with the main structure. No garage shall open to the front of a Tract, or in the case of a Corner Lot, no garage shall open to the street of such Corner Lot.

**6.04 Restrictions on Resubdivision.** None of the Tracts shall be subdivided into smaller tracts.

**6.05 Driveways.** All driveways shall be surfaced with concrete, brick, pavers or a similar substance that is approved by the Architectural Committee.

**6.06 Uses Specifically Prohibited.**

(a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, doghouses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Tract only in places which are not visible from any street on which the Tract fronts) shall be permitted on any Tract except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Tract during construction of the residence on the Tract. No building material of any kind or character shall be placed or stored upon a Tract until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Tract upon which the improvements are to be erected. All children's playhouses, doghouses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment in excess of one hundred square feet (100 sq. ft.) in area, must be approved by the Architectural Committee.

(b) No boat, marine craft, hovercraft, aircraft, recreational vehicle, pickup camper, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Tracts, nor shall any such



vehicle or equipment be parked for storage in the side or rear yard of any residence unless completely concealed from public view. No such vehicle or equipment shall be used as a residence or office, either temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use solely for the construction, maintenance or repair of a residence in the immediate vicinity.

(c) Trucks, buses, trailers or any other vehicles with tonnage in excess of three-fourths (3/4) of a ton and any vehicle containing printing of any type, whether for advertisement purposes or otherwise, shall not be permitted to park overnight in the Subdivision, except those used by a builder during the construction of improvements.

(d) No vehicle of any size which transports inflammatory explosive cargo may be kept in the Subdivision or on the Tracts at any time.

(e) No recreational vehicles, boats or similar equipment shall be parked or stored within the Subdivision in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pickup trucks and pickup trucks with attached bed campers that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas. No inoperable cars or vehicles of any type or nature may be kept or situated in the Subdivision or on the Tracts.

(f) No structure of a temporary character, such as a trailer, basement, tent, shack, barn or other out-building shall be used on the Tracts at any time as a dwelling house; provided, however, that any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period.

(g) No oil or gas drilling, oil development operation, oil refining, quarrying or mining operation of any kind shall be permitted in the Subdivision, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Subdivision. No derrick or other structure designed for using in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted in the Subdivision.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept in the Subdivision except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the explicit purpose and intent of these provisions to restrict the use of the Subdivision so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the Subdivision. No more than four (4) pets will be permitted on each Tract. Pets must be restrained or confined in the back of each Tract inside a fenced area or within the residence. It is the pet owner's responsibility to keep the Tract clean and free of pet debris. All animals must be properly tagged for identification and evidence that all inoculation requirements have been met.

(i) No Tract or other area on the Tracts shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances, and appropriate locations and such containers shall be situated, enclosed, screened or otherwise secured in a manner so as not to be accessible to stray animals or visible from any residential street, private drive or adjacent



Tract. All incinerators or other equipment for the storage or other disposal of such material shall be kept in a clean and sanitary condition. Materials incidental to construction of improvements may be stored on Tracts during construction so long as construction progresses without undue delay.

(j) No individual water supply system shall be permitted in the Subdivision or on any Tract, except a system installed by Declarant or the Association which provides water to the Common Area for irrigation or other purposes.

(k) No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence.

(l) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on any front wall or window of a residence. All utility meters, equipment, air-conditioning compressors, air-conditioning and heating units and similar items (including any propane tanks) placed on any Tract must (to the extent reasonably practicable) be visually screened from the street and adjoining Tracts.

(m) Unless permitted by the Architectural Committee in the manner described in Article VII below, all antennas, discs or any other electronic or satellite communication equipment, including, any type of parabolic reflector or other high gain antenna system(s) or structures, must be located within the attic of the residence on any Tract. No Owner may erect or maintain solar collector panels or equipment upon any Tract. Satellite communication dishes having a diameter not greater than twenty-four inches (24") are specifically allowed on individual Tracts so long as the dish is not visible from any street frontage of the individual Tract. No more than two (2) satellite communication dishes may be installed on any Tract.

(n) No Tract or improvement shall be used for business, professional, commercial, or manufacturing purposes of any kind. No activity, whether for profit or not, shall be conducted which is not related to single-family residential purposes. No noxious or offensive activity shall be undertaken within the Subdivision, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. This expressly prohibits a builder from utilizing a residence as a model home, sales office, or construction office. This further prohibits a builder from maintaining daily presence by builder personnel at the residence for the purpose of conducting any business, other than business related to completion, repair or modification of that home. Such business must cease within a reasonable time relative to the repair or modification being made. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet inoffensive activities such as tutoring or giving art lessons so long as such activities are in compliance with all applicable governmental and zoning requirements and do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' use and enjoyment of their residences and yards.

(o) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any Corner Tract within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines as extended. The same sight line limitations shall apply on any Tract within ten feet (10') from the intersection of a street



right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(p) Except for children's playhouses, doghouses, greenhouses and gazebos, no building previously constructed elsewhere shall be moved onto any Tract, it being the intention that only new construction shall be placed and erected thereon. Any building(s) previously constructed elsewhere from the list above that exceeds one hundred square feet (100 sq. ft.) in area must have the prior written approval from the Architectural Committee prior to its installation.

(q) Within easements on each of the Tracts, no structures, planting or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may change the direction of flow within drainage channels or which may obstruct or retard the flow of water through drainage channels.

(r) The general grading, slope and drainage plan of a Tract may not be altered without the approval of the City and all other appropriate agencies which have authority to grant such approval.

(s) No sign of any kind (including any signs in the nature of a "protest" or complaint by any Owner against Declarant, a homebuilder or any other party or that describe, malign or refer to the reputation, character or building practices of Declarant, a homebuilder or any other party, or negatively impact or attempt to impact anyone's decision to acquire a Tract or residence in the Subdivision) shall be displayed to the public view on any Tract; provided, however, one (1) standard Brooks Farm professionally designed sign provided by the HOA of not more than five square feet (5 sq. ft.) of advertising the property for rent or sale, or signs used by the Declarant or a builder to advertise the property during the construction and sales period may be displayed to the public view on any Tract. Other small signs, such as those announcing the involvement of children in football, cheerleading, etc., shall be allowed, but the homeowners are encouraged to limit the length of time they are displayed. The Declarant, any homebuilder, the Association or any of their agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above and, in so doing shall not be subject to any liabilities for trespass or any other liabilities in conjunction with such removal. The failure to comply with this restriction shall subject any Owner who violates such restriction to a fine of \$100.00 per day to be collected by Declarant or the Association for each day that such Owner fails to comply with this restriction. The nonpayment of such fine shall result in a lien against such Owner's Tract in accordance with this Declaration which lien may be foreclosed in order to collect such fine as contemplated by the procedures set forth in this Declaration.

(t) The drying of clothes in full public view is prohibited. The Owners and occupants of Tracts at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to full public view shall construct a drying yard or other suitable enclosure to screen from public view the equipment which is incident to normal residences, such as clothes drying equipment, yard equipment and storage piles.

(u) Except within fireplaces in the main residential dwelling and except for outdoor cooking, no burning of anything shall be permitted anywhere in the Subdivision.



- (v) No carport shall be permitted on a Tract.
- (w) No abandoned, derelict or inoperative vehicles may be stored or located on any Tract unless visually screened from other Tracts and from any residential street.
- (x) The provisions of all zoning ordinances and building codes affecting all or any part of the Subdivision and/or Tract(s) and in effect as of the date of this document shall be complied with, whether or not they are specifically addressed in the foregoing.
- (y) No building shall be erected or constructed of exterior materials other than brick, brick veneer, stone, stone veneer or stucco, unless otherwise approved by the Architectural Committee, and all Living Units shall be so placed on the interior Tracts as to face the street on which the Tracts front. The placement of improvements on the Tracts shall be subject to the approval of the Architectural Committee. **Any residence located on Tract 5, 6, 15 or 16 of Block B of the Subdivision shall be positioned so that the front of the residence does not directly face Margaux Drive, but instead the residence (i) on Tract 6 shall face or almost face Stony Oak Court, (ii) on Tract 15 shall face or almost face Stony Oak Court, (iii) on Tract 16 shall face or almost face Audubon Drive, and (iv) on Tract 5 shall face or almost face Overbrook Drive.**
- (z) No obnoxious or offensive trade shall be carried on upon any Tract, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No commercial farming shall be permitted. Residential gardens are permitted at the rear of the main dwellings.
- (aa) Any barn, outbuilding or accessory building permitted in accordance with this Declaration (i) shall be erected in accordance with the zoning ordinances governing the Subdivision, (ii) must be architecturally compatible with the main dwelling and constructed of the same materials, (iii) shall be placed behind the primary residence unless otherwise approved by the Architectural Committee, and (iv) must not exceed in size an area equal to the lesser of (A) fifty percent (50%) of the air-conditioned area of the residence located on the Tract, or (B) ten percent (10%) of the area of the Tract. Doors placed on barns, outbuildings or accessory buildings if facing the street shall be constructed of wood and shall be the width of standard size single garage door only; however, multiple single doors may be installed with an appearance in harmony with the main dwelling and community. Outbuildings with street facing doors must be placed further than twenty five feet (25') behind the rear elevation of the main dwelling.
- (bb) No used houses may be moved into the Subdivision.
- (cc) The portion of the residence closest (on the front) to a dedicated street shall be either five feet (5') closer to or further away from a dedicated street than the portion of the dwelling closest (on the front) to a dedicated street on any adjacent Tract; it being the intent of this Declaration to prevent all dwellings facing a dedicated street from being located the same distance from a dedicated street. The Owner shall comply with any setback requirements of this Declaration or imposed by applicable laws or ordinances.
- (dd) Driveways shall be completed at the time of construction of the primary dwelling and shall be concrete, brick or pavers. On Tracts fronting a dedicated street, brick or stone posts with lights